

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

iRACING.COM MOTORSPORT SIMULATIONS,  
LLC, a Delaware Limited Liability Company,

Plaintiff,

**V.**

TIM ROBINSON, individually and d/b/a  
www.ow-racing.com, www.torn8oalley.com and  
www.First-Racing-Sucks.com

Defendant.

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Civil Action No.  
05-11639 NG

AFFIDAVIT OF STEVE MYERS  
IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL

I, Steve Myers, upon oath depose and say as follows:

1. I am employed by iRacing.com Motorsport Simulations, LLC ("iRacing") as Vice President of Operations and Production. I have been employed by iRacing since June 2004.

2. I have significant experience in the field of software development. Prior to working for iRacing, I was employed by Papyrus Racing Games, where I personally produced portions of and managed all aspects of the creation of NASCAR Racing 2003 Season and I participated in the creation and production of two previous versions of this software.

3. On January 18-23, 2006, I examined the files on the seventeen CDs produced by Tim Robinson in response to iRacing's document requests (the

"Production CDs"). One of the computer files at issue in this case, OWR2k5\_v1.0.0.1.zip, was included on the Production CDs.

4. I carefully examined the internal files contained in OWR2k5\_v1.0.0.1.zip. Based on that examination, I believe that there are additional files associated with OWR2k5\_v1.0.0.1.zip that are responsive to iRacing's discovery requests that have not been produced, including but not limited to raw data, source code, by-products, previous iterations, all of which exist for any software development project such as Robinson's work on OWR2k5\_v1.0.0.1.zip. Moreover, all software developers retain notes and documentation, and/or data regarding the software code values changed within the program. Based on these materials, a third party can see exactly what Robinson did to create OWR2k5\_v1.0.0.1.zip.

5. For example, OWR2k5\_v1.0.0.1.zip is a "zipped" computer file, which contains a custom-built installer using Mindvision Software's VISE installer. This Mindvision application is not native to NR2003, and in fact, is specifically used to add, copy and move files. For the Mindvision file to operate, it needs custom-programmed instructions. Nevertheless, Robinson did not produce anything reflecting the Mindvision instructions and commands on the produced CDs.

6. Another example is a file added in the installation process of Robinson's program, OWR05.exe. This file is a modified version of the NR2003.exe file contained as part of iRacing's NASCAR Racing 2003 Season software program. To create OWR05.exe, Robinson had to undertake a complex

process, especially since he testified that he used a hex editor to do his work. It is virtually impossible to achieve a final working version of a file such as OWR05.exe on a first attempt using a hex editor. In the trial-and-error process Robinson testified to, he would have to create several versions of OWR05.exe, which are significant by-products of his development process. Nevertheless, Robinson produced no other versions, iterations, or by-products of attempted iterations of OWR05.exe in the Production CDs.

7. In addition, when a hex editor trial-and-error process is utilized to create software such as OWR2k5\_v1.0.0.1.zip, it is necessary to keep notes and documentation during the trial and error process. Moreover, it would have been almost impossible for Robinson to edit the iRacing software without specific knowledge of exactly what values to change, which would be reflected in notes or memos identifying those values. Nevertheless, Robinson produced no notes or documentation reflecting his trial-and-error process, the source, extent, or documentation of Robinson's understanding of the iRacing software values that he changed and edited or what documentation he received that identified the values to change.

SUSCRIBED AND SWORN TO on this 26th day of January, 2006.

/S/ Steve Myers  
Steve Myers

Certificate of Service

I, Irwin B. Schwartz, attorney for Plaintiff iRacing.com Motorsport Simulations, LLC, hereby certify that on this 26th day of January 2006, I filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to: Joseph F. Ryan, Lyne Woodworth & Evarts LLP, 600 Atlantic Avenue, Boston, MA 02210, counsel for Defendant Tim Robinson.

/S/ Irwin Schwartz  
Irwin B. Schwartz